

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number 2018-10 Rule Number He-C 6341

1. Agency Name & Address:

**NH Dept. of Health & Human Services
Division for Children, Youth and Families
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority: RSA 170-G:5

3. Federal Authority: _____

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Filing Date: **April 23, 2018**

6. Short Title: **Certification Payment Standards for Interpreter Service Providers**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Summary explaining the effect of the rule:

He-C 6341 expired on March 1, 2017. The Department of Health and Human Services (Department) is proposing to adopt these rules again as an interim rule pursuant to RSA 541-A:19, I(e) to minimize the time between the expiration of the rules and their subsequent readoption by the agency. He-C 6341 identifies the qualifications and compliance requirements to become a provider of interpreter services, including deaf, hard of hearing and foreign language, for the Division for Children, Youth and Families (DCYF).

9. Listing of people, enterprises, and government agencies affected by the rule:

He-C 6341 affects individuals or agencies that seek certification to receive financial reimbursement from the department or the provision of interpreter services.

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

Rule	Specific State or Federal Statute the Rule Implements
He-C 6341.01	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.02	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.03	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.04	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.05	RSA 170-G:4, XVIII; RSA 170-G:5; RSA 326-I
He-C 6341.06	RSA 170-G:4, XVIII; RSA 170-G:5
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He-C 6341.09	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.10	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.11	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.12	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.13	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.14	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.15	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.16	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.17	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.18	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.19	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.20	RSA 170-G:4, XVIII; RSA 170-G:5

11. Summary of the effect upon the state if the rule were not adopted:

If the interim rule were not adopted, the Department will not be able to properly identify the qualifications and compliance requirements that individuals or agencies need to become a provider of interpreter services for DCYF.

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

May 18, 2018.

13. The fiscal impact statement prepared by the Legislative Budget Assistant

No fiscal impact statement is required with this interim rule.

Adopt He-C 6341, previously effective 3-1-09 (Document #9392), and expired 3-1-17, to read as follows:

PART He-C 6341 CERTIFICATION PAYMENT STANDARDS FOR INTERPRETER SERVICE PROVIDERS

He-C 6341.01 Purpose. The purpose of this part is to identify the qualifications and compliance requirements to become a provider of interpreter services, including deaf, hard of hearing and foreign language, for the division for children, youth and families (DCYF) and the division of juvenile justice services (DJJS).

He-C 6341.02 Scope. This part shall apply to individuals or agencies that seek certification to receive financial reimbursement from the department of health and human services (DHHS) for the provision of interpreter services.

He-C 6341.03 Definitions.

(a) “Agency” means the board of directors, executive director, and employees of an organization that is incorporated and recognized by the NH secretary of state or another state’s regulatory authority.

(b) “Applicant” means the person or entity that is requesting certification for payment as an interpreter service provider.

(c) “Certification for payment” means the process by which DCYF approves the qualifications of and payment to providers of interpreter services.

(d) “Child or minor” means an individual from birth through age 20, except as otherwise stated in a specific provision.

(e) “Child protective service worker (CPSW)” means an employee of the division for children, youth and families who has expertise in managing cases to ensure families and children achieve safety, permanency and well-being.

(f) “Commissioner” means the commissioner of the department of health and human services or his or her designee.

(g) “Conflict of interest” means a situation, circumstance, or financial interest, which has the potential to cause a private interest to interfere with the proper exercise of a public duty.

(h) “Department” means the department of health and human services.

(i) “Director” means the director of the division for children, youth, and families, or designee.

(j) “Division for children, youth, and families (DCYF)” means the organizational unit of the department of health and human services that provides services to children and youth referred by courts pursuant to RSA 169-C, RSA 170-B, RSA 170-C and RSA 463.

(k) “Division for juvenile justice services (DJJS)” means the organizational unit of the department of health and human services that provides supervision and services to children and youth referred by courts or the juvenile parole board pursuant to RSA 169-B, RSA 169-D and RSA 170-H.

(l) “Interpreter” means “interpreter” as defined in RSA 326-I:2, VI.

(m) “Interpreters for foreign language or limited english proficiency” means a person who conveys the meaning of a word or a group of words from a source language into the target language.

(n) “Juvenile probation and parole officer (JPPO)” means an employee of DJJS who discharges the powers and duties established by RSA 170-G:16, and supervises paroled delinquents pursuant to RSA 170-H.

(o) “NH bridges” means the automated case management, information, tracking, and reimbursement system used by the division for children, youth and families and the division for juvenile justice services.

(p) “Provider” means the individual or agency that serves a child or family and receives financial reimbursement from the department.

(q) “Quality assurance” means the process that DCYF uses to monitor the quality and effectiveness of interpreter services.

(r) “Service authorization” means the documentation provided by DCYF or DJJS indicating the division’s responsibility for payment of community-based services for non-medicare eligible children.

He-C 6341.04 Compliance Requirements.

(a) Providers shall comply with:

- (1) All applicable licensing requirements from state licensing authorities prior to applying for certification;
- (2) The confidentiality statutes of RSA 169-B:35, RSA 169-C:25, RSA 169-D:25, RSA 170-B:23, RSA 170-C:14, and RSA 170-G:8-a;
- (3) The child abuse and neglect reporting requirements of RSA 169-C:29-30;
- (4) The billing requirements described in He-C 6341.10; and
- (5) The billing process described in He-C 6341.11.

(b) Providers and any employees shall not have a conflict of interest, as defined in He-C 6341.03(g).

(c) Providers shall maintain liability insurance.

(d) Failure to comply with the rules of this chapter shall result in:

- (1) Denial of an applicant pursuant to He-C 6341.17;
- (2) Revocation of certification for payment of a provider pursuant to He-C 6341.17; or
- (3) Denial of reimbursement.

He-C 6341.05 Requirements for Deaf or Hard of Hearing Interpreter Services.

(a) Deaf or hard of hearing interpreter services shall include:

- (1) Translation and assistance in communication with:
 - a. The child(ren) or family;
 - b. DCYF or DJJS; or

- c. Any other community-based agency; and
 - (2) Assistance to the child and family with DCYF or DJJS procedures and any related forms.
- (b) A provider for deaf or hard of hearing interpreter services shall:
- (1) Be licensed pursuant to RSA 326-I or any other state's licensing authorities;
 - (2) Have the ability to interpret both orally and in writing, linguistic information for the deaf and/or hard of hearing;
 - (3) Maintain a current license or certification by the Registry of Interpreters for the Deaf, Inc.;
 - (4) Contact the CPSW or JPPO prior to service delivery to discuss confidentiality, case information, court dates, and court protocols;
 - (5) Keep all assignment-related information confidential;
 - (6) Have the ability to interpret the message impartially by conveying the content and intent of the message using language most readily understood by the person(s) whom they serve; and
 - (7) Adhere to the code of professional conduct standards issued by the licensing authorities.

He-C 6341.06 Requirements for Foreign Language Interpreter Services.

- (a) Foreign language interpreter services shall include:
- (1) Translation and assistance in communication with:
 - a. The child(ren) or family;
 - b. DCYF or DJJS;
 - c. Any other community-based agency; and
 - d. Any DCYF or DJJS related procedures or forms.
- (b) A provider for foreign language interpreter services shall:
- (1) Be 18 years of age or older;
 - (2) Submit a resume that lists education and experience at the time of application and review of continued certification compliance;
 - (3) Submit names and addresses of 2 references who can verify professional experience and expertise;
 - (4) Have the ability to interpret orally or in writing linguistic information for those who speak a foreign language or have limited English proficiency;
 - (5) Contact the CPSW or JPPO prior to service delivery to discuss confidentiality, case information, court dates, and court protocol;

- (6) Keep all assignment-related information confidential; and
- (7) Have the ability to interpret the message impartially by conveying the content and intent of the message using language most readily understood by the person(s) whom they serve.

He-C 6341.07 Application Process For Payment Standards For Interpreter Services.

(a) Applicants who seek initial certification for payment for interpreter services shall contact a DCYF/DJJS district office supervisor or designee and request to be referred for certification.

(b) The DCYF/DJJS district office supervisor or DCYF certification specialist shall assess the need for services, based on the following criteria:

- (1) The number of children and families who require services exceeds the available community resources;
- (2) A specialized service is necessary to meet the unique needs of children and families, and there are no currently certified providers who can provide the specialized service; or
- (3) Any other case circumstance which requires the provision of services pursuant to a court order.

(c) If there is a need for a service based on (b) above, DCYF shall forward an application packet to the applicant which includes:

- (1) An "Application for Certification of Interpreter Service Providers";
- (2) An "Alternate W-9"; and
- (3) A copy of He-C 6341.

(d) Each applicant agency shall provide the following information on or with the "Application for Certification of Interpreter Service Providers":

- (1) A statement indicating whether the applicant or any employee has ever been subject to disciplinary action by a licensing body or professional society, been found civilly liable for professional misconduct, or found to have committed an ethical violation by a state or national professional association or any other state's regulatory board, and if so, the name of the licensing body or professional society, the reasons, dates, and results;
- (2) A statement indicating whether the applicant or any employee is currently listed in any child abuse and neglect state registry as having abused or neglected a child, and if so, the dates and reasons;
- (3) A statement indicating whether the applicant or any employee has ever been convicted of a felony or any crime against a person which has not been annulled or overturned and if so, the name of the court, the details of the offense, the date of conviction and the sentence imposed; and
- (4) A resume or curriculum vitae for the executive director and a master list that identifies the name, the type of license, and the date of license expiration for each employee who provides services.

(e) Within 30 days of receipt, the applicant agency shall complete and return the following documents along with the attachments in (d) above to DCYF:

- (1) The “Application for Certification of Interpreter Service Providers”; and
- (2) The “Alternate W-9”.

(f) Each individual, non agency applicant shall provide the following information on or with the “Application for Certification of Interpreter Service Providers”:

- (1) A statement indicating whether the applicant is currently listed in any child abuse and neglect state registry as having abused or neglected a child, and if so, the dates and reasons;
- (2) A statement indicating whether the applicant has been convicted of a felony or any crime against a person and if so, the name of the court, the details of the offense, the date of conviction and the sentence imposed;
- (3) A resume or curriculum vitae;
- (4) If providing deaf or hard of hearing interpreter services, a copy of current license issued pursuant to RSA 326-I or another state’s licensing authority; and
- (5) If providing foreign language interpreter service a copy of:
 - a. The name of the school attended or currently attending;
 - b. Documentation of proficiency in a foreign language; and
 - c. The names and addresses of 2 references who can verify experience and expertise.

(g) Within 30 days of receipt, the individual applicant shall complete and return the following documents along with the attachments in (f) above to DCYF:

- (1) The “Application for Certification of Interpreter Service Providers”; and
- (2) The “Alternate W-9”.

(h) The applicant’s signature shall constitute an affirmation and acceptance of the terms below:

- (1) The applicant has read and understands He-C 6341;
- (2) The applicant shall be subject to a review by DCYF of financial information submitted for reimbursement for services provided to children and families; and
- (3) The information contained in the application is true and correct to the best of the applicant's knowledge.

He-C 6341.08 Review of Continued Certification Compliance.

- (a) Providers shall complete a review form, as provided by DCYF, within 30 days of receipt.
- (b) Providers who fail to submit a review form within 30 days of receipt shall have their certification revoked in accordance with He-C 6341.17 and be denied payment.
- (c) Continuance of certification shall be based on a review and verification of the provider’s compliance with He-C 6341.

(d) Review of continued certification compliance shall occur every 3 years from the date of issue.

He-C 6341.09 Notification of Changes.

(a) Providers shall notify DCYF in writing within 10 days of any change in the information contained in the application and provide documentation of the change.

(b) At the time of expiration of mandatory state licenses, the provider shall submit a copy of the renewed license to DCYF within 10 days of receipt from the licensing authority.

He-C 6341.10 Billing and Rate Requirements for Interpreter Services.

(a) Providers shall be certified prior to the start of service delivery, as a provider of services to children and families.

(b) Providers shall not bill DCYF/DJJS for services that are to be reimbursed by any other entity.

(c) Providers shall be reimbursed at a base rate of \$40.89 per hour with periodic increases as appropriated by the legislature.

(d) The rates established pursuant to He-C 6341 are contingent upon the availability and continued appropriation of sufficient funds for this purpose, and in no event shall DCYF/DJJS be liable for any payments hereunder in excess of such available and appropriated funds.

(e) Providers shall accept agreed upon payments made by DCYF/DJJS as payments in full for the services it provides.

(f) DCYF/DJJS shall determine the necessity of care and services and the determination shall be binding on the provider.

(g) Providers shall notify DCYF of any changes in tax information and complete and submit to DCYF a signed alternate W-9 form with current tax information.

(h) Providers shall provide services or care without discrimination as required by 42 U.S.C 2000d et. seq., as amended, and without discrimination on the basis of handicap as required by 29 U.S.C. 794, as amended.

(i) The agency provider's certification shall terminate upon date of sale or transfer of ownership or close of the agency.

He-C 6341.11 Billing Process for Interpreter Services.

(a) Providers shall request a service authorization prior to service delivery.

(b) Services provided without a service authorization shall not be paid.

(c) Providers shall bill the department through NH Bridges via paper claims or electronic claims submission.

(d) For paper claim submission, a provider shall:

(1) Copy the service authorization form for future billings if the authorized service dates span a date range;

- (2) Forward the completed and signed service authorization to the department; and
 - (3) Attach an invoice to the service authorization that details dates and number of hours interpreting services were provided.
- (e) For electronic claims submission, a provider shall:
- (1) Complete a provider web billing request form and have received a logon and password; and
 - (2) Select the recipient(s) and timeframe(s) for which they wish to submit claims from their list of approved service authorizations.

He-C 6341.12 Billing Period.

- (a) Providers shall bill within one year of service provision.
- (b) Bills received for payment one year or more after the service date shall be denied pursuant to RSA 126-A:3.
- (c) Providers shall submit bills at least on a monthly basis.

He-C 6341.13 Billing Discrepancies. Questions regarding billing discrepancies shall be directed to the provider relations' staff of the bureau of administrative operations in DCYF.

He-C 6341.14 Billing Record Retention. Providers shall retain records for a period of not less than 7 years after the completion date of services provided, supporting each bill submitted to the department.

He-C 6341.15 Quality Assurance Activities.

- (a) Providers shall be subject to quality assurance reviews conducted by DCYF and DJJS.
- (b) Providers shall allow:
 - (1) Scheduled or unscheduled on-site visits by DCYF and DJJS;
 - (2) Interviews with program staff;
 - (3) Interviews with children and families served; and
 - (4) A review of program documents to determine continued compliance with He-C 6341.
- (c) Providers shall ensure records, including all billing records, are available for inspection and review by DCYF and DJJS staff during any on-site quality assurance visit.

He-C 6341.16 Waivers.

- (a) Applicants who request a waiver of a requirement in He-C 6341 shall submit a written request to the commissioner or his or her designee, which includes the following information:
 - (1) The reason for requesting the waiver;

- (2) The anticipated length of time the requested waiver will be needed;
 - (3) Assurance that if the waiver is granted the quality of services to children youth and families will not be affected;
 - (4) A written plan to achieve compliance with the rule or explaining how the provider will satisfy the intent of the rule, if the waiver is granted;
 - (5) How the service will be affected if the waiver is not granted; and
 - (6) The signature of the person requesting the waiver.
- (b) A waiver shall be granted if:
- (1) The department concludes that authorizing deviation from compliance with the rule from which waiver is sought does not contradict the intent of the rule or conflict with statute; and
 - (2) The alternative proposed ensures that the object or intent of the rule will be accomplished.
- (c) When a waiver is approved, the applicant's or provider's subsequent compliance with the alternative approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.

He-C 6341.17 Denial of Application and Revocation of Certification.

- (a) An application shall be denied or provider certification revoked if:
- (1) DCYF or DJJS determines that the state does not have a need for the service;
 - (2) The applicant or the individual acting on the applicant's or provider's behalf, submits materially false information to DCYF or DJJS;
 - (3) There has been a conviction for a felony or any crime against a child that has not been annulled or overturned;
 - (4) The provider knowingly retained an employee for whom there has been a conviction for a felony or any crime against a person;
 - (5) There has been abusive or neglectful treatment of a child as determined by any state statute;
 - (6) There has been disciplinary action taken by a licensing body or professional society, a finding of civil liability made for professional misconduct, or a finding of an ethical violation made by a state or national professional association or any other state's regulatory board that has not been annulled or overturned;
 - (7) There has been a failure to submit a review form within 30 days; or
 - (8) There has been failure to comply with He-C 6341.

He-C 6341.18 Notification of Denial or Revocation.

(a) If DCYF denies an application for certification or revokes an existing certification, DCYF shall send notice of the denial or revocation to the applicant or provider by certified mail.

(b) The notice shall:

- (1) Inform the applicant or provider of the facts or conduct upon which DCYF bases its action;
- (2) Advise the applicant or provider of their right to request reconsideration of DCYF's decision pursuant to He-C 6341.19; and
- (3) In the case of an existing certification, inform the provider that the revocation shall not take effect until the provider has had an opportunity through an appeal, pursuant to RSA 170-G:4-a and He-C 6341.20, to show compliance with all lawful requirements for retention of the certification.

He-C 6341.19 Request for Certification Reconsideration.

(a) A request for certification reconsideration shall:

- (1) Be filed within 30 days of the date of receipt of the letter sent by DCYF;
- (2) Be submitted in writing; and
- (3) Be filed with the director of DCYF.

(b) The DCYF director shall grant or deny the request, pursuant to He-C 6341.17.

(c) The applicant or provider shall be notified of the decision, in writing by the director.

(d) The applicant or provider may appeal the DCYF director's decision pursuant to He-C 6341.20.

He-C 6341.20 Appeals.

(a) Applicants or providers who wish to appeal DCYF's decision shall file an appeal pursuant to RSA 170-G: 4-a with the commissioner.

(b) The appeal shall be:

- (1) Made in writing and state the reasons for the appeal pursuant to RSA 170-G:4-a;
- (2) Filed within 14 working days of the date of receipt of written notification; and
- (3) Signed and dated.

(c) Pursuant to RSA 170-G:4-a and He-C 200, the commissioner or designee and 2 members of the DCYF advisory board shall hear the appeal.

APPENDIX B

RULE	SPECIFIC STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-C 6341.01	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.02	RSA 170-G:4, XVIII; RSA 170-G:5
He-C 6341.03	RSA 170-G:4, XVIII; RSA 170-G:5
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